



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-028]

Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order; Unpatented R-421A

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a covered merchandise referral from U.S. Customs and Border Protection (CBP) and allegations of circumvention from the American HFC Coalition (the petitioners), the Department of Commerce (Commerce) is initiating an anti-circumvention inquiry to determine whether imports of non-patented R-421A (a blend of hydrofluorocarbon (HFC) components R-125 and R-134a) from the People's Republic of China (China) that are further processed into finished HFC blends in the United States are circumventing the antidumping duty (AD) order on HFC blends from China.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Andrew Medley or Manuel Rey, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4987 and (202) 482-5518, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 2017, Choice Refrigerants (Choice) filed a scope ruling request that Commerce determine if non-patented R-421A HFCs imported from China qualify for the exclusion in the scope of the *Order* on HFC blends from China.¹ On December 4, 2017, Commerce received a covered merchandise referral from CBP regarding CBP Enforce and Protect Act (EAPA) Investigation No. 7212.² On December 27, 2017, LM Supply Inc. (LM Supply) submitted comments on Choice's scope request.³ On March 5, 2018, Commerce published a notice of covered merchandise referral providing parties notice of the referral and inviting participation from interested parties.⁴

On April 4, 2018, we sent a questionnaire to LM Supply regarding the product included in the referral from CBP;⁵ on April 27, 2018, we received a response to the questionnaire from LM Supply.⁶ On May 11, 2018, the American HFC Coalition and its individual members⁷ filed deficiency comments as well as factual information in response to LM Supply's April 27, 2018 submission.⁸

¹ See Letter from Choice, "Application for Scope Ruling on Exclusion of Patented HFC Blends from Antidumping Duty Order A-570-028: Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China," dated November 30, 2017 (Choice Scope Ruling Request); *see also Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order*, 81 FR 55436 (August 19, 2016) (the *Order*).

² See Letter from CBP, "EAPA Case Number: 7212; Scope Referral Request for merchandise under EAPA Investigation 7212, imported by LM Supply, Inc. and concerning the investigation of evasion of the antidumping duty order on hydrofluorocarbon blends from the People's Republic of China (A-570-028)," dated December 4, 2017 (CBP EAPA Referral Letter) and accompanying Attachments.

³ See LM Supply Letter, "Comments in response to Kenneth Ponder's and Choice Refrigerants' November 30, 2017 Application for a Scope Ruling," dated December 27, 2017 (LM Supply Scope Comments).

⁴ See *Hydrofluorocarbon Blends from the People's Republic of China: Notice of Covered Merchandise Referral*, 83 FR 9277 (March 5, 2018).

⁵ See Letter to LM Supply re: "Hydrofluorocarbon Blends from the People's Republic of China – Scope Ruling Supplemental Questionnaire," dated April 4, 2018.

⁶ See LM Supply Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Supplemental Questionnaire Response," dated April 27, 2018 (LM Supply April 27, 2018 SQR).

⁷ The American HFC Coalition includes Amtrol Inc., Arkema Inc., The Chemours Company FC LLC, Honeywell International Inc., Hudson Technologies Inc., Mexichem Fluor Inc., and Worthington Industries Inc. were the petitioners in the underlying investigation (the petitioners).

⁸ See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Submission of Factual Information in Response to Scope Exclusion Request," dated May 11, 2018.

On August 15, 2018, the petitioners filed a request that, pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act), Commerce initiate an anti-circumvention inquiry regarding imports of non-patented R-421A (a blend of HFC components R-125 and R-134a) from China that are further processed into finished HFC blends in the United States, which the petitioners allege are circumventing the *Order*.⁹ On September 6, 2018, LM Supply filed an objection to the petitioners' request for an anti-circumvention inquiry.¹⁰ Also on September 6, Choice filed a response to the petitioners' allegation of circumvention, in which it reiterated its request that Commerce issue a determination in the scope ruling inquiry immediately, and also voiced its belief that LM Supply was circumventing the *Order*.¹¹ On September 24, 2018, Commerce received rebuttal comments to LM Supply's objection to the application of section 781(a) from the petitioners.¹²

Scope of the Order

The products subject to the *Order* are HFC blends. HFC blends covered by the scope are R-404A, a zeotropic mixture consisting of 52 percent 1,1,1 Trifluoroethane, 44 percent Pentafluoroethane, and 4 percent 1,1,1,2-Tetrafluoroethane; R-407A, a zeotropic mixture of 20 percent Difluoromethane, 40 percent Pentafluoroethane, and 40 percent 1,1,1,2-Tetrafluoroethane; R-407C, a zeotropic mixture of 23 percent Difluoromethane, 25 percent

⁹ See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Scope Investigation Regarding Certain Unpatented HFC Blends: Request to Apply Section 781(a) to Prevent Circumvention," dated August 15, 2018 (Initiation Request).

¹⁰ See LM Supply's Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Scope Investigation Regarding Certain Unpatented HFC Blends: Objection to Petitioners' Request to Initiate Anti-Circumvention Proceedings Pursuant to Section 781(a)," dated September 6, 2018.

¹¹ See Choice's Letter, "Response of Choice Refrigerants to the American HFC Coalition's Request to Apply Section 781(a) to Prevent Circumvention; *Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order*, DCK. A-570-028, 81 Fed. Reg. 55436 (Aug. 19, 2016)," dated September 6, 2016.

¹² See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Scope Investigation Regarding Certain Unpatented Blends: Response to LM Supply Inc.'s Objection to Application of Section 781(a) to Prevent Circumvention," dated September 24, 2018.

Pentafluoroethane, and 52 percent 1,1,1,2-Tetrafluoroethane; R-410A, a zeotropic mixture of 50 percent Difluoromethane and 50 percent Pentafluoroethane; and R-507A, an azeotropic mixture of 50 percent Pentafluoroethane and 50 percent 1,1,1-Trifluoroethane also known as R-507. The foregoing percentages are nominal percentages by weight. Actual percentages of single component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.¹³

Any blend that includes an HFC component other than R-32, R-125, R-143a, or R-134a is excluded from the scope of the *Order*.

Excluded from the *Order* are blends of refrigerant chemicals that include products other than HFCs, such as blends including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), hydrocarbons (HCs), or hydrofluoroolefins (HFOs).

Also excluded from the *Order* are patented HFC blends, including, but not limited to, ISCEON® blends, including MO99™ (R-438A), MO79 (R-422A), MO59 (R-417A), MO49Plus™ (R-437A) and MO29™ (R-422D), Genetron® Performax™ LT (R-407F), Choice® R-421A, and Choice® R-421B.

HFC blends covered by the scope of the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3824.78.0020 and 3824.78.0050.

¹³ R-404A is sold under various trade names, including Forane® 404A, Genetron® 404A, Solkane® 404A, Klea® 404A, and Suva®404A. R-407A is sold under various trade names, including Forane® 407A, Solkane® 407A, Klea®407A, and Suva®407A. R-407C is sold under various trade names, including Forane® 407C, Genetron® 407C, Solkane® 407C, Klea® 407C and Suva® 407C. R-410A is sold under various trade names, including EcoFluor R410, Forane® 410A, Genetron® R410A and AZ-20, Solkane® 410A, Klea® 410A, Suva® 410A, and Puron®. R-507A is sold under various trade names, including Forane® 507, Solkane® 507, Klea®507, Genetron®AZ-50, and Suva®507. R-32 is sold under various trade names, including Solkane®32, Forane®32, and Klea®32. R-125 is sold under various trade names, including Solkane®125, Klea®125, Genetron®125, and Forane®125. R-143a is sold under various trade names, including Solkane®143a, Genetron®143a, and Forane®125.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.¹⁴

Merchandise Subject to the Anti-Circumvention Inquiry

This anti-circumvention inquiry covers imports of unpatented R-421A, a blend of HFC components R-125 and R-134a, from China that are further processed in the United States to create an HFC blend that would be subject to the *Order*.

Initiation of Anti-Circumvention Proceeding

Section 781(a) of the Act and 19 CFR 351.225(g) provide that Commerce may find circumvention of an AD order when merchandise of the same class or kind as merchandise that is subject to the order is completed or assembled in the United States. In conducting anti-circumvention inquiries under section 781(a)(1) of the Act, Commerce relies upon the following criteria: (A) merchandise sold in the United States is of the same class or kind as other merchandise that is subject to an AD order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which the AD order applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components is a significant portion of the total value of the merchandise.

A. Merchandise of the Same Class or Kind

The petitioners point to proprietary information to claim that imported unpatented R-421A, a blend of HFC components R-125 and R-134A, produced in China may be further processed into an HFC blend covered by the *Order* and sold in the United States.¹⁵ The

¹⁴ See *Order*.

¹⁵ See Initiation Request at 10-12 (citing LM Supply April 27, 2018 SQR; Choice Scope Ruling Request; and CBP EAPA Referral Letter and accompanying Attachment 2).

petitioners contend that, in principle, when starting with a blend of R-125 and R-134A it would be relatively simple to add additional HFC components R-32 or R-134A to obtain an in-scope HFC blend.¹⁶ Further, the petitioners argue that the imported R-421A blend is not sold in the United States, but, rather, is consumed by LM Supply, and that LM Supply's affiliate, not LM Supply, sells HFC blends which are covered by the *Order*.¹⁷ Therefore, the petitioners contend that the requirements of section 781(a)(1)(A)(i) of the Act are satisfied.

B. Completion of Merchandise in the United States

The petitioners point to record evidence to demonstrate that the imported unpatented R-421A blend is imported from China.¹⁸ Therefore, the petitioners contend that the requirements of section 781(a)(1)(B) of the Act are satisfied.

C. Minor or Insignificant Process

Under sections 781(a)(1)(C) and 781(a)(2) of the Act, Commerce will take into account five factors to determine whether the process of assembly or completion of merchandise in the United States is minor or insignificant. Specifically, Commerce will consider: (A) the level of investment in the United States; (B) the level of research and development in the United States; (C) the nature of the production process in the United States; (D) the extent of production facilities in the United States; and (E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.

1) Level of investment in the United States

¹⁶ *Id.* at 11.

¹⁷ *Id.* at 10-12 (citing LM Supply April 27, 2018 SQR; Choice Scope Ruling Request; and CBP EAPA Referral Letter and accompanying Attachment 2).

¹⁸ *See* Initiation Request at 12 (citing LM Supply Scope Comments).

The petitioners point to record evidence, including information presented to the International Trade Commission (ITC) during its investigation, to demonstrate that blending is a simple and straightforward process that requires relatively small investment, as compared to an investment to set-up a production facility to manufacture HFC components.¹⁹ According to the petitioners, blending HFC components only requires a holding tank for the finished HFC blend, some pipes, and valves, and, further, adding a single HFC component to an existing R-125/R-134a blend requires a holding tank into which the component would be introduced.²⁰ Further, the petitioners contend that there is no chemical reaction and no temperature change involved in blending two or more HFC components, and simply involves combining the components in accordance with the blending recipe, then packaging the blend into various containers.²¹ The petitioners further note that LM Supply has not provided information regarding its investment in the United States in blending operations. The petitioners provided information indicating that blending requires less than a one million dollar investment, while a production facility to manufacture HFC components requires an investment of hundreds of millions of dollars in equipment needed to handle high-hazard reaction and purification processes.²² As such, petitioners contend that a significant level of investment in the United States is not required to perform blending.

2) Level of research and development in the United States

¹⁹ See Initiation Request at 13-16 (citing LM Supply April 27, 2018 SQR), Exhibit 1 (ITC Hearing transcript), Exhibit 2 (TTI Response to Section D), Exhibit 3 (ITC Conference transcript), Exhibit 4 (Memorandum to File, “Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components (HFCs) from the People’s Republic of China: Conference Call with Officials from U.S. Customs and Border Protection (CBP),” dated July 30, 2015 (CBP Conference Call Memo)).

²⁰ *Id.* at 14.

²¹ *Id.* at 14 and Exhibit 2 (TTI Response to Section D).

²² *Id.* at 15 and Exhibits 1 and 3 (ITC Conference transcript and ITC Hearing transcript).

The petitioners assert that LM Supply does not identify any research and development required to blend HFC components or undertake such operations.²³

3) Nature of the production process in the United States

The petitioners provide record evidence to demonstrate that blending is a simple production process consisting of blending two components together, and consists of ISO tanks and only a handful of workers.²⁴ The petitioners further contend that blending requires a different level of expertise and much fewer workers than producing HFC components.²⁵ As such, the petitioners contend that the nature of the production process in the United States appears to be neither complex nor significant.

4) Extent of production facilities in the United States

The petitioners provide record evidence to demonstrate that the extent of production facilities in the United States, as compared to the production of HFC components, is minimal.²⁶

5) Value of processing performed in the United States

The petitioners provide an analysis based on proprietary information to demonstrate that the blending and re-packaging in the United States amounts to a very small percent of the total value of the imported R-421A.²⁷ The petitioners further point to Commerce's determination in the underlying investigation that blending costs do not reach the level of significance to change

²³ *Id.* at 16.

²⁴ *Id.* at 16-17 and Exhibit 1 (ITC Hearing transcript).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 17-18 (citing Memorandum to the File, "Hydrofluorocarbon Blends from the People's Republic of China: Placement of CBP Letter and Attachments," dated March 6, 2018, enclosing LM Supply's response to a CBP Form 28, dated February 13, 2018 (and enclosed "Proforma Invoice") and Exhibit 5 (a proprietary agreement demonstrating the cost to blend HFC components)).

the country of origin.²⁸ Thus, the petitioners contend that such a small percentage of value-added represents a very small proportion of the value of the merchandise sold in the United States.

D. Value of Merchandise Produced in the Foreign Country Is a Significant Portion of the Value of the Merchandise

Relying on proprietary information, the petitioners contend that the R-421A imported by LM Supply from China accounts for a significant portion of the total value of the merchandise, in accordance with section 781(a)(1)(D) of the Act.²⁹

E. Factors to Consider in Determining Whether Action Is Necessary

Section 781(a)(3) of the Act identifies additional factors that Commerce shall consider in determining whether to include parts or components in an AD order as part of an anti-circumvention inquiry, such as patterns of trade, including sourcing patterns, and affiliations. The petitioners contend that based on the proprietary information on the record and other record evidence, LM Supply's imports of unpatented R-421A, which are sourced from a major Chinese exporter, and routed through Jamaica, represent a change in the pattern of trade.³⁰ Additionally, the petitioners contend that LM Supply's affiliation with BMP International, a major source of low-priced HFC blends in the investigation, further points to a pattern of trade intended to be addressed by section 781(a) of the Act, which, if allowed to continue, will negate the effectiveness of the *Order*.³¹

Conclusion

²⁸ *Id.* at 18; see also *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016), and accompanying Issues and Decision Memorandum at Comment 4.

²⁹ *Id.* at 19 (citing LM Supply April 27, 2018 SQR).

³⁰ *Id.* at 20-21 (citing CBP EAPA Referral Letter and accompanying Attachment 2), Exhibit 4 (CBP Conference Call Memo), Exhibit 6 (presentation by the HFC Coalition to CBP, dated March 10, 2017), and Exhibit 7 (Kivlan and Company Scope Comments).

³¹ *Id.* at 20-21.

After analyzing the record evidence and the petitioners' allegation, we determine that there is sufficient information to warrant an initiation of a formal anti-circumvention inquiry, pursuant to section 781(a) of the Act and 19 CFR 351.225(g). Commerce will determine whether the merchandise subject to the inquiry (as described in the "Merchandise Subject to the Anti-Circumvention Inquiry" section above) is circumventing the *Order* such that it should be included within the scope of the *Order*. Additionally, as part of this anti-circumvention inquiry, we intend to address both the covered merchandise referral from CBP and the scope inquiry filed by Choice under 19 CFR 351.225(c).³² Our final findings in this anti-circumvention inquiry will also include a response to the covered merchandise referral and a final finding with regards to Choice's scope inquiry.³³

In accordance with 19 CFR 351.225(l)(2), if Commerce issues a preliminary affirmative determination, we will then instruct CBP to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry.

Following consultation with interested parties, Commerce will establish a schedule for questionnaires and comments on the issues related to the inquiry. Before issuance of any affirmative determination, Commerce intends to notify the ITC of any proposed inclusion of the inquiry merchandise under the *Order* in accordance with section 781(e)(1)(A) of the Act.

³² See CBP EAPA Referral Letter and Choice Scope Ruling Request.

³³ We aligned the EAPA referral and Choice's request for a scope ruling on unpatented R-421A because they cover the same merchandise. See Memorandum, "Alignment of Scope Inquiry and EAPA Referral on Unpatented R-421A," dated March 5, 2018. Additionally, the petitioners filed their anti-circumvention inquiry request onto the record of the scope inquiry involving R-421 unpatented blends at the same time that they also filed their anti-circumvention inquiry request onto the record of the EAPA investigation. See Initiation Request.

Pursuant to section 781(f) of the Act and 19 CFR 351.225(f)(5), Commerce intends to issue its final determination within 300 days of the date of publication of this initiation.

Notification to Interested Parties

This notice is published in accordance with section 781(a) of the Act and 19 CFR 351.225(g).

Dated: June 12, 2019.

Jeffrey I. Kessler,

Assistant Secretary

for Enforcement and Compliance.

[FR Doc. 2019-12842 Filed: 6/17/2019 8:45 am; Publication Date: 6/18/2019]